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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,307	03/30/2007	Byron Scott Bailey SR.	TS/4-22995/CGC 2176/PCT	4972
324	7590	02/22/2010	EXAMINER	
Ciba Corporation Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			HAMMER, KATIE L	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			02/22/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

andrea.dececchis@basf.com  
deborah.pinori@basf.com  
sonny.nkansa@basf.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,307	<b>Applicant(s)</b> BAILEY ET AL.	
	<b>Examiner</b> KATIE HAMMER	<b>Art Unit</b> 1796	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This Office Action is in response to the Applicant's amendments filed on October 22, 2009. Claims 1-16 are pending in this application. Claims 1, 4, and 7 are currently amended. Claim 17 has been cancelled.

The rejection of claims 1, 4, and 7 under 35 U.S.C. 112, second paragraph, as being indefinite is withdrawn in view of applicant's amendments to the claims.

Claims 1-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jollenbeck et al. (US 5,009,669).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-16, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jollenbeck et al. (US 5,009,669).

As to claims 1-9 and 11-15, Jollenbeck et al. (US '669) teaches a composition comprising (A) the compound of formula (1) wherein  $R_1$  is  $C_1$ - $C_{12}$  alkyl, aryl, or aralkyl and  $R_2$ ,  $R_3$ , and  $R_4$  are hydrogen,  $n$  is a number from 4 to 50, and  $X$  is the acid radical or an inorganic oxygen containing acid (see col. 1, lines 27-41 and the structure of formula (2) shown below left where  $Y$  is  $C_1$ - $C_{12}$  alkyl, aryl, or aralkyl and  $X$  is acid radical or an inorganic oxygen containing acid) and compound (B), formaldehyde condensation

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products from aromatic sulfonic acids and formaldehyde (see col. 9, lines 58-61); a composition containing as component (A) a compound of the formula (1), wherein  $R_1$  is 1-phenylethyl,  $R_2$ ,  $R_3$ , and  $R_4$  are hydrogen, Y represents ethylene, and n is a number from 12 to 30 (see col. 1, lines 27-41 and col. 2, lines 3-11); wherein the acid radical X is the ethanolamine, diethanolamine, triethanolamine, ammonium, or potassium (see col. 2, lines 43-52); as component (B) a condensation product of formaldehyde with sulfonated ditolyl ether (see col. 6, lines 36-43); polyadducts of 2 to 80 moles of alkylene oxide with unsaturated or saturated monoalcohols, fatty acids, fatty amines or fatty amides of 8 to 22 carbon atoms (see col. 5, lines 38-44); a composition where component (C) is a polyadduct of 20 to 30 moles of ethylene oxide with 1 mole of stearyl alcohol (polyadducts of 2 to 80 moles ethylene oxide replaced by higher saturated monoalcohols, see col. 5, lines 38-44); an aqueous dispersion containing 5-40% by weight of a benzotriazole UV absorber and the composition according to claim 1 (see col. 1, lines 10-41 and the structure of formula (1) shown below); a UV absorber that is the benzotriazole compound of formula (2) where  $R_1$  is halogen and  $R_2$  and  $R_3$  are hydrogen (structure of formula (1) shown below right where R is halogen, see col. 1, lines 13-26); a UV absorber that is the benzotriazole compound of formula (2a) (structure of formula (1) shown below right where R is  $C_1$ -alkyl, and B is further substituted by a lower alkyl, the  $C(CH_3)_3$ , see col. 1, lines 13-26); an aqueous dispersion containing 1-10% by weight of a stabilizing or thickening agent (see col. 4, lines 37-45); dispersion containing a heteropolysaccharide formed from the monosaccharides glucose and mannose and glucuronic acid as thickening agent (see col. 5, lines 5-15).



As to claim 16, Jollenbeck et al. (US '669) also teaches a process for dyeing textile material which comprises dyeing this material in the presence of an aqueous dispersion (see col. 8, lines 3-10).

Regarding claim 10, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778F.2d 775,227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.051. Applicant has not provided evidence for the criticality of their composition percentage weights as compared to the composition taught in Jollenbeck et al. that can also be used for dyeing textile materials. Therefore, and in conjunction with the U.S.C. 112 rejection issues stated above, the claimed composition would have been obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Amendment***

3. The declaration under 37 CFR 1.132 filed on October 22, 2009 is insufficient to overcome the rejection of claims 1-17 based upon 35 U.S.C. 103(a) as being unpatentable over Jollenbeck et al. (US 5,009,669) as set forth in the last Office action because: The declaration is not commensurate in scope with the claims. The D2 mixture in the declaration only uses one specific compound of component A, the

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benzotriazole UVA, and one compound of component B, the sulfonated ditolyether formaldehyde condensate at only one particular ratio. The instant claim 1 is of broader scope than the narrow scope demonstrated by the declaration (and includes additional components besides A and B). Therefore, the demonstrated reduction in differential pressure is only valid for the single compounds at that particular ratio and does not overcome the teachings of Jollenbeck et al.

### ***Response to Arguments***

4. Applicant's arguments filed on October 22, 2009 have been fully considered but they are not persuasive. Applicants argue that Jollenbeck et al. do not teach or suggest any specific amounts of this optional dispersing agent (component A) in relation to its dispersing agent (b), and that the Applicants' claimed weight ratio is not one that has been optimized within the conditions taught in Jollenbeck et al. by routine experimentation. As stated above, the experimental data provided by Applicant in the declaration is not commensurate in scope with the instant claims. Therefore, the combination of components A and B taught by Jollenbeck et al. renders the claims obvious (see abstract and col. 9, lines 58-61).

The Applicants further argue that they have surprisingly found that the differential pressure observed during static dyeing can be substantially reduced when components (A) and (B) are combined at a weight ratio ranging from 19:1 to 3:1 then added to a solution containing a UV absorber. As stated above, the experimental data provided by Applicant in the declaration providing evidence for this result is not commensurate in

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scope with the instant claims. Furthermore, the instant claim 1 only claims the **composition** itself, on which the differential pressure observed during static dyeing as an unexpected result has no effect, and does not claim this static dyeing process until dependent claim 16. Therefore, this experimental proof of unexpected result is irrelevant to the instant claim 1. Accordingly, the rejections are maintained.

### ***Conclusion***

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/  
Supervisory Patent Examiner, Art  
Unit 1796

/KLH/